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IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

Dated this the 16th day of April, 1998.

BEFORE

HON'BLE MR. JUSTICE S.R. VENKATESHA MURTHY

H.R.R.P. NUMBER 956/96

Between:

S.Manikchand Ranka,
s/o Multhanmal Ranka,
43 years, R/at No.20,
Lakshmi Road,
Shanthinagar, Bangalore-27.

PETITIONER.

(Sri.L.Mohan for petitioner)

And:-

Yeswanth Jeenabhai,
s/o Jeenabhai Devidas,
Major, R/at No.7,
Ulsoor Road, Bangalore-8.

RESPONDENT.

(Sri. A.S.Bopanna for respondent)

This HRRP is filed under section 50(1) of KRC Act against the order dated 27-~~11-1995~~ passed in HRC No. 188/95 on the file of the Addl.Small Causes, Judge, Bangalore City, allowing the petition filed u/s. 21 (1) (b) of the KRC Act.

This Revision being reserved for orders this day, the Court made the following:-


ORDER

This is tenant's Revision directed against the order dated 27-11-1995 in HRC 188 of 1995 on the file of the Court of Small Causes, Bangalore City.

2. The parties are referred to according to their array in the trial court.


3. The petitioner sought eviction of the respondent-tenant under section 21 (1)(h) and (p) of the Karnataka Rent Control Act, 1961 (hereinafter called the Act) on the ground that the premises is reasonably and bonafide required for setting up his son separately after performing his marriage; that the respondent-tenant has already secured an alternative premises and has been residing there.

4. The respondent-tenant admittedly entered appearance through a Counsel and there-
-after never participated in the proceedings for eviction. The evidence of the petitioner was recorded and the matter was posted for cross-




-examination of the petitioner and thereafter for arguments; ~~but~~ the respondent never attempted to participate in the proceedings of the trial court. The trial court by its order dated 27-11-1995 found that the petitioner's case for eviction of the respondent under section 21 (1)(h) of the Act had been established while the claim for eviction under section ~~21~~ (1)(p) had not been substantiated. Consequently, the Court of Small Causes allowed the eviction petition under section 21 (1) (h) of the Act only, granting three months' time to the respondent-tenant to vacate the premises.

5. The petitioner-~~landlord~~ sued-out execution and delivery was ordered by the Court. The delivery warrant was returned unexecuted complaining of obstruction. After the Summer Vacation, a fresh delivery warrant with Police protection was taken and was ultimately executed on 19-6-1996




and the delivery was accepted by the trial court the next day and the proceedings were closed. Thereafter on 28-6-1996, this Revision was filed. The ground on which the petitioner seeks to challenge the order of the Rent Control Court is that in September, 1994, the respondent-tenant's daughter Alka was found missing, having left the house to attend Bishop Cotton Girls' College. On 29-9-1994, a complaint was lodged to the Police about the missing of Alka and a case in Crime No. 847/95 was registered. The respondent-tenant's daughter was found traced in the company of one Rajesh Ramesh Mohite at Dahanu, Thane District and was found to have been forcibly undergone a registered marriage. The respondent-tenant persuaded Rajesh Ramesh Mohite to disown the marriage and was dissolved by executing documents of mutual divorce before a Magistrate at Bombay in October, 1994. Thereafter Rajesh Ramesh Mohite complained of kidnapping his wife namely the respondent-tenant's daughter




and came to Bangalore and again took away the respondent's daughter in October, 1994. Another case of kidnapping in crime No. 904 of 1994 was registered. As a result of all these, the respondent-tenant was found running from place to place. The respondent's daughter committed suicide and burning herself on 3-12-1995 at Poonamia hospital, Dahanu. On account of these circumstances, the respondent-tenant could not participate in the proceedings, having lost sight of it. The Counsel engaged by the respondent also did not conduct himself properly, as a result of which, the order in question is come to be passed. The respondent-tenant has sought to contend that the ^{order of the} Court of Small Causes, is otherwise unsustainable in law and should be set aside.

6. The petitioner-landlord has contested the claim made by the respondent-tenant not only regarding the alleged date of death of




respondent tenant's daughter but also has challenged the certificates produced as **forged** certificates and has produced a **letter** and a certificate issued from the very hospital where the respondent's daughter is alleged to have died, to the effect that there was no such death. The claim of the respondent-tenant's illness from November, 1995 to June, 1996 is also challenged as unworthy of belief. It is contended that the respondent-tenant was not living at all in the premises, as can be seen from the documents produced by the respondent-tenant in this case, ~~(admittedly)~~ supporting his claim of the personal misfortune involving his daughter.

7. The reason as to why the respondent-tenant could not participate in the trial of the case is a matter which not borne out on record and cannot be pleaded in the revision as a ground of attack on the order made by the trial court. If the respondent-tenant's case




is that he could not participate in the trial on account of the circumstances mentioned above, then his remedy was apparently one under Order 9 Rule 13 CPC which is applicable to even rent control proceedings. In the proceedings under Order 9 Rule 13 CPC, the respondent-tenant could have pleaded and established all the circumstances which prevented him from prosecuting his defence of the case for eviction under section 21 of the Act and sought appropriate remedy. In a Revision of this nature, the allegations that are made by the respondent-tenant are not borne out on record affecting the decision sought to be assailed, especially having regard to the fact that the respondent-tenant's claim is severely challenged to the extent of even making an allegations that the certificate regarding the death of the daughter is not genuine and is sought to be supported by a counter certificate issued from the very hospital. Therefore, I am of the opinion that none of the grounds sought to be raised has reason for the respondent tenant's



inability to participate in the trial can be taken into consideration for setting aside the order when the more comprehensive Rule 13 remedy available by Order 9 CPC was not availed of by the respondent-tenant. Indeed, the respondent-tenant's own documents such as FIR filed to the Police in Crime No. 847/94 shows that the respondent was not a resident of the petition schedule premises even as early as September, 1994. The memorandum of marriage of the respondent-tenant's daughter again shows that she was a resident of premises No.12, III Cross, Lakshmi Road, Shanthinagar, Bangalore. The declaration of mutual divorce filed dated 24th September, 1994 again shows the same address as found in the memorandum of marriage dated 28-9-1994. All documents connected with the certificate of the respondent-tenant's daughter shows that she is a resident of Shanthinagar, Lakshmi Road. The FIR in Crime No.904/94 dated 23-10-1994 again shows the place of residence is Shanthinagar

court
and not the schedule premises. The/notice to
the complainant is ~~again~~^{again} addressed to the Lakshmi
Road residence of Shanthinagar, Bangalore. All
these documents produced by the petitioner show
that he was residing elsewhere even before the
institution of the proceedings. The contention
on behalf of the petitioner-landlord is that
notwithstanding the misfortune pleaded, the
respondent-tenant indeed had no interest in
pursuing the defence of the case and that, ^{as} how he
did not contest the proceedings and has now
come up with an after-thought, getting up
documents of doubtful validity. It was cont-
-ended that even the medical certificate of
illness is not given by any doctor at Bangalore
and is given by a doctor from a different
place there being absolutely no allegation of
the respondent-tenant having lived out of
Bangalore from the period of his alleged illness
from November, 1995 to June, 1996. Having
regard to all these circumstances and contentions
raised, I am of the opinion that in this Revision



none of the grounds explaining the inaction of the respondent-tenant can be said to be avail_able to the respondent-tenant as a cause for setting aside the order impugned. The remedy of a Revision is ~~squarrelly~~ inappropriate in the face of contest on facts, pleaded by the respondent-tenant.

8. So far the merits are concerned, the only evidence that was available before the Court of Small Causes was the evidence of the petitioner and the learned Trial Judge accepted the evidence as constituting a ground for eviction under section 21 (1)(h) of the Act. What could have happened on contest on merits by the respondent-tenant could not have been anticipated by the trial court to reject the claim for eviction. Indeed, the requirement of the petitioner to set up his son separately on his marriage is a matter that come clearly within the perceive needs of the petitioner and cannot be challenged as ^{beint} so patently ~~absurd~~ to have meritted

rejection even without a contest from the respondent. The order of the trial court is not open to attack on the ground that the evidence tendered by the petitioner was not sufficient to establish the ingredients of section 21 (1)(h) of the Act, there being no evidence¹contrary to the claim made by the petitioner-landlord. The respondent not having availed the opportunity of contesting it, it is not open to him now by way of a revision to claim that no ground for eviction had been made out on the evidence tendered.

9. The documentary evidence tendered by the respondent-tenant in this Revision would show that the rejection of the claim for eviction under section 21 (1)(p) of the Act by the trial court was itself unsustainable. In these circumstances, I am of the opinion that the Revision has no merit as the order of the trial court is in accordance with law on the evidence tendered before it. In the circumstances, the Revision is dismissed with costs.

Sd/-
JUDGE